

107TH CONGRESS
1ST SESSION

S. 1669

To authorize appropriations for hazardous material transportation safety,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 2001

Mr. HOLLINGS (for himself and Mr. MCCAIN) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To authorize appropriations for hazardous material
transportation safety, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49,**
4 **UNITED STATES CODE; TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Hazardous Material Transportation Safety Reauthoriza-
7 tion Act of 2001”.

8 (b) AMENDMENT OF TITLE 49, UNITED STATES
9 CODE.—Except as otherwise expressly provided, whenever
10 in this Act an amendment or repeal is expressed in terms

1 of an amendment to, or a repeal of, a section or other
 2 provision, the reference shall be considered to be made to
 3 a section or other provision of title 49, United States
 4 Code.

5 (c) TABLE OF CONTENTS.—The table of contents of
 6 this Act is as follows:

Sec. 1. Short title; amendment of title 49, United States Code; table of contents.
 Sec. 2. Purpose.
 Sec. 3. Definitions.
 Sec. 4. General regulatory authority.
 Sec. 5. Representation and tampering.
 Sec. 6. Highly radioactive material.
 Sec. 7. Handling criteria.
 Sec. 8. Hazmat employee training requirements and grants.
 Sec. 9. Registration.
 Sec. 10. Motor carrier safety.
 Sec. 11. Shipping paper retention.
 Sec. 12. Rail tank cars.
 Sec. 13. Unsatisfactory safety rating.
 Sec. 14. Public sector training curriculum.
 Sec. 15. Planning and training grants.
 Sec. 16. Special permits and exclusions.
 Sec. 17. Inspectors.
 Sec. 18. Uniform forms and procedures.
 Sec. 19. Administrative.
 Sec. 20. Enforcement.
 Sec. 21. Penalties.
 Sec. 22. Preemption.
 Sec. 23. Relationship to other laws.
 Sec. 24. Judicial review.
 Sec. 25. Authorization of appropriations.
 Sec. 26. Postal service civil penalty authority.

7 **SEC. 2. PURPOSE.**

8 Section 5101 is revised to read as follows:

9 **“§ 5101. Purpose**

10 “The purpose of this chapter is to protect against the
 11 risks to life, property, and the environment that are inher-
 12 ent in the transportation of hazardous material in intra-
 13 state, interstate, and foreign commerce.”.

1 **SEC. 3. DEFINITIONS.**

2 Section 5102 is amended—

3 (1) by revising paragraph (1) to read as follows:

4 “(1) ‘commerce’ means trade or transportation
5 in the jurisdiction of the United States—

6 “(A) between a place in a State and a
7 place outside of the State;

8 “(B) that affects trade or transportation
9 between a place in a State and a place outside
10 of the State; or

11 “(C) on a United States-registered air-
12 craft.”;

13 (2) by revising paragraphs (3) and (4) to read
14 as follows:

15 “(3) ‘hazmat employee’ means an individual
16 who—

17 “(A)(i) is employed or used by a hazmat
18 employer; or

19 “(ii) is self-employed, including an owner-
20 operator of a motor vehicle, vessel, or aircraft
21 transporting hazardous material in commerce;
22 and

23 “(B) performs a function regulated by the
24 Secretary under section 5103(b)(1) of this
25 chapter.

26 “(4) ‘hazmat employer’ means a person that—

1 “(A)(i) has at least one hazmat employee;

2 or

3 “(ii) is self-employed, including an owner-

4 operator of a motor vehicle, vessel, or aircraft

5 transporting hazardous material in commerce;

6 and

7 “(B) performs, or employs or uses at least

8 one hazmat employee to perform, a function

9 regulated by the Secretary under section

10 5103(b)(1) of this chapter.”;

11 (3) in paragraph (5), by striking “condition

12 that presents” and inserting “condition related to a

13 hazardous material that presents”;

14 (4) in paragraph (7), by striking “title” and in-

15 serting “title, except a freight forwarder is included

16 only if performing a function related to highway

17 transportation”;

18 (5) in paragraph (8), by striking “national re-

19 sponse team” each place it appears and inserting

20 “National Response Team,” and by striking “na-

21 tional contingency plan” and inserting “National

22 Contingency Plan”; and

23 (6) in paragraph (9), by revising subparagraph

24 (A) to read as follows:

1 “(A) includes a government, Indian tribe,
2 or authority of a government or tribe offering
3 hazardous material for transportation in com-
4 merce, transporting hazardous material to fur-
5 ther a commercial enterprise, or manufacturing,
6 designing, inspecting, testing, reconditioning,
7 marking, or repairing a packaging or packaging
8 component represented as qualified for use in
9 transporting hazardous material in commerce;
10 but”.

11 **SEC. 4. GENERAL REGULATORY AUTHORITY.**

12 Section 5103 is amended—

13 (1) by revising subsection (a) to read as follows:

14 “(a) DESIGNATING MATERIAL AS HAZARDOUS.—The
15 Secretary of Transportation shall designate material (in-
16 cluding an explosive; radioactive material; infectious sub-
17 stance; flammable or combustible liquid, solid or gas;
18 toxic, oxidizing or corrosive material; and compressed gas)
19 or a group or class of material as hazardous when the
20 Secretary determines that transporting the material in
21 commerce in a particular amount and form may pose an
22 unreasonable risk to health and safety or property.”; and

23 (2) in subsection (b)(1), by revising subpara-
24 graph (A) to read as follows:

25 “(A) apply to a person that—

1 “(i) transports a hazardous material
2 in commerce;

3 “(ii) causes a hazardous material to
4 be transported in commerce;

5 “(iii) manufactures, designs, inspects,
6 tests, reconditions, marks, or repairs a
7 packaging or packaging component rep-
8 resented as qualified for use in trans-
9 porting hazardous material in commerce;

10 “(iv) prepares, accepts, or rejects haz-
11 ardous material for transportation in com-
12 merce;

13 “(v) is responsible for the safety of
14 transporting hazardous material in com-
15 merce;

16 “(vi) certifies compliance with any re-
17 quirement issued under this chapter; or

18 “(vii) misrepresents whether it is en-
19 gaged in any of the above activities; and”.

20 **SEC. 5. REPRESENTATION AND TAMPERING.**

21 Section 5104 is amended—

22 (1) in subsection (a), by striking “A person”
23 and inserting “No person”;

24 (2) by revising subsection (a)(1) to read as fol-
25 lows:

1 “(1) a package, component of a package, or
 2 packaging for transporting hazardous material is
 3 safe, certified, or complies with this chapter if it
 4 does not conform to each applicable regulation pre-
 5 scribed under this chapter; or”;

6 (3) in paragraph (a)(2), by striking “only if”
 7 and inserting “unless”; and

8 (4) by revising subsection (b) to read as follows:

9 “(b) TAMPERING.—No person may, without author-
 10 ization from the owner or custodian, alter, remove, de-
 11 stroy, or tamper with—

12 “(1) a marking, label, placard, or description on
 13 a document required under this chapter or a regula-
 14 tion prescribed under this chapter; or

15 “(2) a package, container, motor vehicle, rail
 16 freight car, aircraft, or vessel used to transport haz-
 17 ardous material.”.

18 **SEC. 6. HIGHLY RADIOACTIVE MATERIAL.**

19 Section 5105 is amended by striking subsections (d)
 20 and (e).

21 **SEC. 7. HANDLING CRITERIA.**

22 Chapter 51 is amended by striking section 5106 and
 23 striking the corresponding item in the analysis of chapter
 24 51.

1 **SEC. 8. HAZMAT EMPLOYEE TRAINING REQUIREMENTS**
2 **AND GRANTS.**

3 (a) Section 5107 is amended by—

4 (1) striking “or duplicate” in subsection (d);

5 (2) striking “section 5127(c)(3)” in subsection
6 (e) and inserting “section 5128”; and

7 (3) striking “and sections 5106, 5108(a)-(g)(1)
8 and (h), and 5109 of this title” in subsection (f)(2).

9 (b) Notwithstanding section 4(b)(1) of the Occupa-
10 tional Safety and Health Act of 1970 (29 U.S.C.
11 653(b)(1), an action of the Secretary of Transportation
12 under chapter 51 of title 49, United States Code, does
13 not preclude the Secretary of Labor from prescribing or
14 enforcing standards, regulations or requirements regard-
15 ing —

16 (1) hazardous materials employee training, or

17 (2) the occupational safety or health protection
18 of employees responding to a release of hazardous
19 materials.

20 **SEC. 9. REGISTRATION.**

21 Section 5108 is amended—

22 (1) by striking “class A or B explosive” in sub-
23 section (a)(1)(B) and inserting “Division 1.1, 1.2, or
24 1.3 explosive material”;

25 (2) by revising subsection (a)(2)(B) to read as
26 follows:

1 “(B) a person manufacturing, designing,
 2 inspecting, testing, reconditioning, marking, or
 3 repairing a packaging or packaging component
 4 represented as qualified for use in transporting
 5 a hazardous material in commerce.”;

6 (3) by revising subsection (b)(1)(C) to read as
 7 follows:

8 “(C) each State in which the person car-
 9 ries out any of the activities.”;

10 (4) by revising subsection (c) to read as follows:

11 “(c) **FILING SCHEDULE.**—Each person required to
 12 file a registration statement under subsection (a) of this
 13 section shall file that statement in accordance with regula-
 14 tions issued by the Secretary.”;

15 (5) in subsection (g)(1), by striking “may” and
 16 inserting “shall”; and

17 (6) in subsection (i)(2)(B), by striking “State,”
 18 and inserting “State, Indian tribe,”.

19 **SEC. 10. MOTOR CARRIER SAFETY.**

20 Chapter 51 is amended by striking section 5109 and
 21 striking the corresponding item in the analysis of chapter
 22 51.

23 **SEC. 11. SHIPPING PAPER RETENTION.**

24 Section 5110 is amended—

1 (1) in subsection (a), by striking “under sub-
 2 section (b) of this section” and inserting “by regula-
 3 tion”;

4 (2) by striking subsection (b) and redesignating
 5 subsections (c) through (e) as subsections (b)
 6 through (d); and

7 (3) by revising the first sentence in subsection
 8 (d), as redesignated, to read as follows: “The person
 9 that provided the shipping paper and the carrier re-
 10 quired to keep it under this section shall retain the
 11 paper, or an electronic image of it, for a period of
 12 3 years after the shipping paper was provided to the
 13 carrier, to be accessible through their respective
 14 principal places of business.”.

15 **SEC. 12. RAIL TANK CARS.**

16 Chapter 51 is amended by striking section 5111 and
 17 by striking the corresponding item in the analysis of chap-
 18 ter 51.

19 **SEC. 13. UNSATISFACTORY SAFETY RATING.**

20 (a) Section 5113 is amended by adding at the end
 21 the following:

22 “(e) PENALTY FOR VIOLATION.—A violation of sec-
 23 tion 31144(c)(3) of this title shall be considered a violation
 24 of this chapter and shall be subject to the penalties in sec-
 25 tions 5123 and 5124 of this chapter.”.

1 (b) Section 31144(c) is amended—

2 (1) in paragraph (1), by striking “sections
3 521(b)(5)(A) and 5113” and inserting “section
4 521(b)(5)(A)”;

5 (2) in paragraph (3), by striking “interstate
6 commerce” and inserting “commerce”;

7 (3) by adding at the end of paragraph (3) the
8 following: “A violation of this paragraph by an
9 owner or operator transporting hazardous material
10 shall be considered a violation of chapter 51 of this
11 title, and shall be subject to the penalties in sections
12 5123 and 5124 of this chapter.”.

13 (c) Section 31144 is amended by striking the sub-
14 section designation “(c)” at the beginning of the last sub-
15 section and inserting “(f)”.

16 **SEC. 14. PUBLIC SECTOR TRAINING CURRICULUM.**

17 Section 5115 is amended—

18 (1) in subsection (a), by—

19 (A) striking “DEVELOPMENT AND UPDAT-
20 ING.—Not later than November 16, 1992, in”
21 and inserting “GENERAL.—In”;

22 (B) striking “national response team” and
23 inserting “National Response Team” in the
24 first sentence;

1 (C) striking “develop and update periodically a” in the first sentence and inserting
2 “maintain a current”; and
3

4 (D) striking the second sentence;
5 (2) in subsection (b), by—

6 (A) striking “developed” and inserting
7 “maintained” in the first sentence; and

8 (B) in paragraph (1)(C), by striking
9 “under other United States Government grant
10 programs, including those developed with grants
11 made under section 126(g) of the Superfund
12 Amendments and Reauthorization Act of 1986
13 (42 U.S.C. 9660a)” and inserting “with Federal
14 financial assistance”;

15 (3) in subsection (c)(3), by striking “the National
16 Fire Protection Association” and inserting
17 “the National Fire Protection Association and such
18 other voluntary consensus standard-setting organizations
19 as the Secretary deems appropriate”; and

20 (4) by revising subsection (d) to read as follows:

21 “(d) DISTRIBUTION AND PUBLICATION.—With the
22 National Response Team, the Secretary of Transportation
23 may publish and distribute a list of courses developed
24 under this section and of programs using any of those
25 courses.”.

1 **SEC. 15. PLANNING AND TRAINING GRANTS.**

2 (a) Section 5116 is amended—

3 (1) in the second sentence of subsection (e), by
 4 striking “of the State or tribe under subsections
 5 (a)(2)(A) and (b)(2)(A)” and inserting “received by
 6 the State or tribe under subsections (a)(1) and
 7 (b)(1)”;

8 (2) revising subsection (f) to read as follows:

9 “(f) **MONITORING AND TECHNICAL ASSISTANCE.**—
 10 The Secretary of Transportation shall monitor public-sec-
 11 tor emergency response planning and training for an acci-
 12 dent or incident involving hazardous material. Considering
 13 the results of the monitoring, the Secretary shall provide
 14 technical assistance to a State, political subdivision of a
 15 State, or Indian tribe for carrying out emergency response
 16 training and planning for an accident or incident involving
 17 hazardous material and shall coordinate the assistance
 18 using the existing coordinating mechanisms of the Na-
 19 tional Response Team and, for radioactive material, the
 20 Federal Radiological Preparedness Coordinating Com-
 21 mittee.”;

22 (3) in subsection (g), by striking “Government
 23 grant” and inserting “Federal financial assistance”;

24 (4) by revising subsection (i) to read as follows:

25 “(i) **EMERGENCY PREPAREDNESS FUND.**—The Sec-
 26 retary of the Treasury shall establish an Emergency Pre-

paredness Fund account in the Treasury into which the Secretary of the Treasury shall deposit amounts the Secretary of Transportation transfers to the Secretary of the Treasury under section 5108(g)(2)(C) of this title. Without further appropriation, amounts in the account are available—

“(1) to make grants under this section;

“(2) to monitor and provide technical assistance under subsection (f) of this section;

“(3) to publish and distribute the Emergency Response Guidebook; and

“(4) to pay administrative costs of carrying out this section and sections 5108(g)(2) and 5115 of this title, except that not more than 10 percent of the amounts made available from the account in a fiscal year to carry out these sections may be used to pay those costs.”; and

(5) by striking subsection (k).

(b) Chapter 51 is amended by—

(1) revising the section heading for section 5116 to read “Planning and training grants; emergency preparedness fund”; and

(2) striking the item for section 5116 in the analysis of the chapter and inserting “5116. Plan-

1 ning and training grants; emergency preparedness
2 fund.”.

3 **SEC. 16. SPECIAL PERMITS AND EXCLUSIONS.**

4 (a) Section 5117 is amended—

5 (1) by revising the section heading to read as
6 follows:

7 **“§ 5117. Special permits and exclusions” ;**

8 (2) by striking “exemption” and “an exemp-
9 tion” each place they appear and inserting, respec-
10 tively, “special permit” and “a special permit”;

11 (3) in subsection (a)(1), as revised by Section
12 16(a)(2) of this Act, by striking “issue a special per-
13 mit” and inserting “issue, modify, or terminate a
14 special permit authorizing variances”, and by strik-
15 ing “transporting, or causing to be transported, haz-
16 ardous material” and inserting “performing a func-
17 tion regulated by the Secretary under section
18 5103(b)(1) of this title”; and

19 (4) in subsection (a)(2), by striking “2” and in-
20 serting “4”.

21 (b) The chapter analysis for chapter 51 is amended
22 by striking the item related to section 5117 and inserting
23 the following:

“5117. Special permits and exclusions.”.

1 **SEC. 17. INSPECTORS.**

2 Chapter 51 is amended by striking section 5118 and
3 striking the corresponding item in the analysis of chapter
4 51.

5 **SEC. 18. UNIFORM FORMS AND PROCEDURES.**

6 Section 5119 is revised to read as follows:

7 **“§ 5119. Uniform forms and procedures**

8 “(a) REGULATIONS.—(1) The Secretary of Transpor-
9 tation may prescribe regulations to establish uniform
10 forms and procedures for a State—

11 “(A) to register and issue permits to persons
12 that transport or cause to be transported hazardous
13 material by motor vehicle in the State; and

14 “(B) to allow the transportation of hazardous
15 material in the State.

16 “(2) A regulation prescribed under this section may
17 not define or limit the amount of a fee a State may impose
18 or collect.

19 “(b) EFFECTIVE DATE.—A regulation prescribed
20 under this section takes effect one year after it is pre-
21 scribed. The Secretary may extend the one-year period for
22 an additional year for good cause. After a regulation is
23 effective, a State may establish, maintain, or enforce a re-
24 quirement related to the same subject matter only if the
25 requirement is the same as the regulation.

1 “(c) UNIFORMITY.—The Secretary shall develop a
 2 procedure to eliminate differences in how States carry out
 3 a regulation prescribed under this section.

4 “(d) INTERIM STATE PROGRAMS.—Pending promul-
 5 gation of regulations under this section, States may par-
 6 ticipate in a program of uniform forms and procedures
 7 recommended by the Alliance for Uniform Hazmat Trans-
 8 portation Procedures.”.

9 **SEC. 19. ADMINISTRATIVE.**

10 Section 5121 is revised to read as follows:

11 **“§ Sec. 5121. Administrative**

12 “(a) GENERAL AUTHORITY.—To carry out this chap-
 13 ter, the Secretary of Transportation may investigate, con-
 14 duct tests, make reports, issue subpoenas, conduct hear-
 15 ings, require the production of records and property, take
 16 depositions, and conduct research, development, dem-
 17 onstration, and training activities. Except as provided in
 18 subsections (c) and (d) of this section, the Secretary shall
 19 provide notice and an opportunity for a hearing prior to
 20 issuing an order directing compliance with this chapter or
 21 a regulation, order, special permit, or approval issued
 22 under this chapter.

23 “(b) RECORDS, REPORTS, PROPERTY, AND INFORMA-
 24 TION.—A person subject to this chapter shall—

1 “(1) maintain records, make reports, and pro-
2 vide property and information that the Secretary by
3 regulation or order requires; and

4 “(2) make the records, reports, property, and
5 information available for inspection when the Sec-
6 retary undertakes an investigation.

7 “(c) INSPECTIONS AND INVESTIGATIONS.—(1) A des-
8 ignated officer or employee of the Secretary may—

9 “(A) inspect and investigate, at a reasonable
10 time and in a reasonable way, records and property
11 related to a function described in section 5103(b)(1)
12 of this chapter;

13 “(B) except for the packaging immediately ad-
14 jacent to its hazardous material contents, gain ac-
15 cess to, open, and examine a package offered for, or
16 in, transportation when the officer or employee has
17 an objectively reasonable and articulable belief that
18 the package may contain a hazardous material;

19 “(C) remove from transportation a package or
20 related packages in a shipment offered for or in
21 transportation, and for which such officer or em-
22 ployee has an objectively reasonable and articulable
23 belief that the package or packages may pose an im-
24 minent hazard, and for which the officer or employee
25 contemporaneously documents that belief in accord-

1 ance with procedures adopted under subsection (e)
2 of this section;

3 “(D) gather information from the offeror, car-
4 rier, packaging manufacturer or retester, or other
5 person responsible for the package or packages, to
6 ascertain the nature and hazards of the contents of
7 the package or packages;

8 “(E) as necessary, under terms and conditions
9 specified by the Secretary, order the offeror, carrier,
10 packaging manufacturer or retester, or other person
11 responsible for the package or packages to have the
12 package or packages transported to, opened and the
13 contents examined and analyzed at a facility appro-
14 priate for the conduct of this activity; and

15 “(F) when safety might otherwise be com-
16 promised, authorize properly qualified personnel to
17 assist in the activities conducted under this sub-
18 section.

19 “(2) An officer or employee acting under this sub-
20 section shall display proper credentials when requested.

21 “(3) For instances when, as a result of the inspection
22 or investigation, an imminent hazard is not found to exist,
23 the Secretary shall develop procedures to assist in the safe
24 resumption of transportation of the package or transport
25 unit.

1 “(d) EMERGENCY ORDERS.—(1) If, upon inspection,
2 investigation, testing, or research, the Secretary deter-
3 mines that either a violation of a provision of this chapter
4 or a regulation issued under this chapter, or an unsafe
5 condition or practice, constitutes or is causing an immi-
6 nent hazard, the Secretary may issue or impose emergency
7 restrictions, prohibitions, recalls, or out-of-service orders,
8 without notice or the opportunity for a hearing, but only
9 to the extent necessary to abate the imminent hazard.

10 “(2) The Secretary’s action under paragraph (1) of
11 this subsection shall be in a written order describing the
12 violation, condition or practice that is causing the immi-
13 nent hazard, and stating the restrictions, prohibitions, re-
14 calls, or out-of-service orders issued or imposed. The order
15 also shall describe the standards and procedures for ob-
16 taining relief from the emergency order.

17 “(3) After taking action under paragraph (1) of this
18 subsection, the Secretary shall provide an opportunity for
19 review of that action under section 554 of title 5, if a peti-
20 tion for review is filed within 20 calendar days after
21 issuance of the order.

22 “(4) If a petition for review is filed and the review
23 is not completed by the end of the 30-day period beginning
24 on the date the petition was filed, the action will cease
25 to be effective at the end of that period unless the Sec-

1 retary determines in writing that the emergency situation
2 still exists.

3 “(5) For purposes of this subsection, ‘out-of-service
4 order’ means a mandate that an aircraft, vessel, motor
5 vehicle, train, railcar, locomotive, other vehicle, transport
6 unit, transport vehicle, freight container, portable tank, or
7 other package not be moved until specified conditions have
8 been met.

9 “(e) REGULATIONS.—The Secretary shall issue regu-
10 lations in accordance with section 553 of title 5, including
11 an opportunity for informal oral presentation, to imple-
12 ment the authority in subsections (c) and (d) of this sec-
13 tion.

14 “(f) FACILITY, STAFF, AND REPORTING SYSTEM ON
15 RISKS, EMERGENCIES, AND ACTIONS.—(1) The Secretary
16 shall—

17 “(A) maintain a facility and technical staff suf-
18 ficient to provide, within the United States Govern-
19 ment, the capability of evaluating a risk related to
20 the transportation of hazardous material and mate-
21 rial alleged to be hazardous;

22 “(B) maintain a central reporting system and
23 information center capable of providing information
24 and advice to law enforcement and firefighting per-
25 sonnel, other interested individuals, and officers and

1 employees of the United States Government and
2 State, local and tribal governments on meeting an
3 emergency related to the transportation of haz-
4 ardous material; and

5 “(C) conduct a continuous review on all aspects
6 of transporting hazardous material to decide on and
7 take appropriate actions to ensure safe transpor-
8 tation of hazardous material.

9 “(2) Paragraph (1) of this subsection does not pre-
10 vent the Secretary from making a contract with a private
11 entity for use of a supplemental reporting system and in-
12 formation center operated and maintained by the con-
13 tractor.

14 “(g) AUTHORITY FOR GRANTS, COOPERATIVE
15 AGREEMENTS, AND OTHER TRANSACTIONS.—To carry
16 out this chapter, the Secretary may enter into grants, co-
17 operative agreements, and other transactions with a per-
18 son, agency or instrumentality of the United States, a unit
19 of State or local government, an Indian tribe, a foreign
20 government (in coordination with the Department of
21 State), an educational institution, or other entity to fur-
22 ther the objectives of this chapter. The objectives of this
23 chapter include the conduct of research, development,
24 demonstration, risk assessment, and emergency response
25 planning and training activities.”.

1 **SEC. 20. ENFORCEMENT.**

2 Section 5122 is amended—

3 (1) in subsection (a), by revising the last sen-
4 tence to read as follows:

5 “The court may award appropriate relief, in-
6 cluding a temporary or permanent injunction, puni-
7 tive damages, and assessment of civil penalties con-
8 sidering the same penalty amounts and factors as
9 prescribed for the Secretary in an administrative
10 case under section 5123 of this chapter.”; and

11 (2) in subparagraph (b)(1)(B), by striking “or
12 ameliorate the” and inserting “or mitigate the”.

13 **SEC. 21. PENALTIES.**

14 (a) Section 5123 is amended—

15 (1) by revising subsection (a) to read as follows:

16 “(a) PENALTY.—(1) A person that knowingly violates
17 this chapter, or a regulation, order, special permit, or ap-
18 proval issued under this chapter, is liable to the United
19 States Government for a civil penalty of at least \$250 but
20 not more than \$100,000 for each violation.

21 “(2) Knowledge by the person of the existence of a
22 statutory provision, or a regulation or requirement pre-
23 scribed by the Secretary is not an element of an offense
24 under this section.

1 “(3) A separate violation occurs for each day the vio-
 2 lation, committed by a person that transports or causes
 3 to be transported hazardous material, continues”; and

4 (2) by redesignating subsections (b) through (g)
 5 as subsections (c) through (h) and inserting a new
 6 subsection (b) to read as follows:

7 “(b) KNOWING VIOLATIONS.—In this section, a per-
 8 son acts knowingly when—

9 “(1) the person has actual knowledge of the
 10 facts giving rise to the violation; or

11 “(2) a reasonable person acting in the cir-
 12 cumstances and exercising reasonable care would
 13 have that knowledge.”;

14 (3) in subsection (c), as redesignated, by strik-
 15 ing the first sentence and inserting the following:

16 “The Secretary of Transportation may find that a
 17 person has violated this chapter, or a regulation, order,
 18 special permit or approval issued under this chapter, only
 19 after notice and an opportunity for a hearing.” ; and

20 (4) by revising subsection (e), as redesignated,
 21 to read as follows:

22 “(e) CIVIL ACTIONS TO COLLECT.—The Attorney
 23 General may bring a civil action in an appropriate district
 24 court of the United States to collect a civil penalty under
 25 this section and any accrued interest on that penalty cal-

1 culated in the manner described under section 2705 of
 2 title 33. In such action, the validity, amount, and appro-
 3 priateness of the civil penalty shall not be subject to re-
 4 view.”.

5 (b) Section 5124 is revised to read as follows:

6 **“§ 5124. Criminal penalty**

7 “(a) GENERAL.—A person knowingly violating sec-
 8 tion 5104(b) of this title or willfully violating this chapter
 9 or a regulation, order, special permit, or approval issued
 10 under this chapter, shall be fined under title 18, impris-
 11 oned for not more than 5 years, or both.

12 “(b) AGGRAVATED VIOLATIONS.—A person know-
 13 ingly violating section 5104(b) of this chapter or willfully
 14 violating this chapter or a regulation, order, special per-
 15 mit, or approval issued under this chapter, and thereby
 16 causing the release of a hazardous material, shall be fined
 17 under title 18, imprisoned for not more than 20 years,
 18 or both.

19 “(c) KNOWING VIOLATIONS.—In this section, a per-
 20 son acts knowingly when—

21 “(1) the person has actual knowledge of the
 22 facts giving rise to the violation; or

23 “(2) a reasonable person acting in the cir-
 24 cumstances and exercising reasonable care would
 25 have that knowledge.

1 “(d) WILLFUL VIOLATIONS.—In this section, a per-
2 son acts willfully when the person acts with intent.

3 “(e) KNOWLEDGE OF REQUIREMENTS.—Knowledge
4 by a person of the existence of a statutory provision, or
5 a regulation or requirement prescribed by the Secretary,
6 is not an element of an offense under this section.”.

7 (c) Section 46312 is amended—

8 (1) in subsection (a), by striking “under this
9 part” and inserting “under this part or under chap-
10 ter 51 of this title”; and

11 (2) in subsection (b), by striking “by the Sec-
12 retary” and inserting “by the Secretary under this
13 part or under chapter 51 of this title”.

14 **SEC. 22. PREEMPTION.**

15 Section 5125 is amended—

16 (1) by redesignating subsections (a), (b), and
17 (c), as subsections (b), (c), and (d), and adding a
18 new subsection (a) to read as follows:

19 “(a) PURPOSES.—The Secretary shall exercise the
20 authority in this section to achieve uniform regulation of
21 hazardous material transportation, eliminate inconsistent
22 rules that apply differently than rules issued under this
23 chapter, and promote the safe and efficient movement of
24 hazardous material in commerce.”;

25 (2) in subsection (b), as redesignated, by—

1 (A) striking “GENERAL.—Except as pro-
 2 vided in subsections (b), (c), and (e)” and in-
 3 serting “DUAL COMPLIANCE AND OBSTACLE
 4 TESTS.—Except as provided in subsections (c),
 5 (d), and (g)”; and

6 (B) in subparagraph (2), striking “car-
 7 rying out this chapter or a regulation” and in-
 8 serting “carrying out this chapter, the purposes
 9 of this chapter, or a regulation”;
 10 (3) in subsection (c), by—

11 (A) in subparagraph (1), striking “(c)”
 12 and inserting “(d)”; and

13 (B) revising subparagraph (1)(E) to read
 14 as follows:

15 “(E) the manufacturing, designing, in-
 16 specting, testing, reconditioning, marking, or
 17 repairing of a packaging or packaging compo-
 18 nent represented as qualified for use in trans-
 19 porting hazardous material in commerce.”; and

20 (C) in subparagraph (2), striking “after
 21 November 16, 1990”;

22 (4) by striking subsection (f) and redesignating
 23 subsections (g), (d), and (e) as subsections (e), (f),
 24 and (g);

1 (5) in subsection (f), as redesignated, by strik-
 2 ing “subsection (a), (b)(1), or (c) of this section”
 3 and inserting “subsection (b), (c)(1), (d), or (e) of
 4 this section or subsection 5119(b) of this chapter.”,
 5 and by striking “in the Federal Register”;

6 (6) in subsection (g), as redesignated, by strik-
 7 ing “subsection (a), (b)(1), or (c) of this section”
 8 and inserting “subsection (b), (c)(1), (d), or (e) of
 9 this section or subsection 5119(b) of this chapter.”;
 10 and

11 (7) by adding new subsections (h) and (i) to
 12 read as follows:

13 “(h) INDEPENDENT APPLICATION OF EACH STAND-
 14 ARD.—Each preemption standard in subsections (b),
 15 (c)(1), (d), and (e) of this section and in section 5119(b)
 16 of this chapter is independent in its application to a re-
 17 quirement of any State, political subdivision of a State,
 18 or Indian tribe.

19 “(i) NONFEDERAL ENFORCEMENT STANDARDS.—
 20 This section does not apply to procedure, penalty, or re-
 21 quired mental state or other standard used by a State,
 22 political subdivision of a State, or Indian tribe to enforce
 23 a requirement applicable to transportation of a hazardous
 24 material.”.

1 **SEC. 23. RELATIONSHIP TO OTHER LAWS.**

2 Section 5126 is amended—

3 (1) by revising subsection (a) to read as follows:

4 “(a) CONTRACTS.—A person under contract with a
5 department, agency, or instrumentality of the United
6 States Government that transports hazardous material or
7 causes hazardous material to be transported, or manufac-
8 tures, designs, inspects, tests, reconditions, marks, or re-
9 pairs a packaging or packaging component represented as
10 qualified for use in transporting hazardous material in
11 commerce shall comply with this chapter, regulations pre-
12 scribed and orders issued under this chapter, and all other
13 requirements of the United States Government, State and
14 local governments, and Indian tribes (except a require-
15 ment preempted by a law of the United States) in the
16 same way and to the same extent that any person engag-
17 ing in that transportation, manufacturing, designing, in-
18 specting, testing, reconditioning, marking, or repairing
19 that is in or affects commerce must comply with the provi-
20 sion, regulation, order, or requirement.”; and

21 (2) in subsection (b), by—

22 (A) striking “title 18 or 39;” and inserting
23 “title 18 or 39; or” in paragraph (2); and

24 (B) adding a new paragraph (3) to read as
25 follows:

1 “(3) marine transportation of hazardous mate-
 2 rial subject to regulation under title 33 or 46.”.

3 **SEC. 24. JUDICIAL REVIEW.**

4 (a) Chapter 51 is amended by redesignating section
 5 5127 as section 5128, and by inserting after section 5126
 6 the following new section:

7 **“§ 5127. Judicial review**

8 “(a) FILING AND VENUE.—Except as provided in
 9 section 20114(c) of this title, a person suffering legal
 10 wrong or adversely affected or aggrieved by a final action
 11 of the Secretary of Transportation under this chapter may
 12 petition for review of the final action in the United States
 13 Court of Appeals for the District of Columbia or in the
 14 court of appeals for the United States for the circuit in
 15 which the person resides or has its principal place of busi-
 16 ness. The petition must be filed not more than 60 days
 17 after the Secretary’s action becomes final.

18 “(b) JUDICIAL PROCEDURES.—When a petition is
 19 filed under subsection (a) of this section, the clerk of the
 20 court immediately shall send a copy of the petition to the
 21 Secretary. The Secretary shall file with the court a record
 22 of any proceeding in which the final action was issued,
 23 as provided in section 2112 of title 28.

24 “(c) AUTHORITY OF COURT.—The court has exclu-
 25 sive jurisdiction, as provided in the Administrative Proce-

1 dure Act, 5 U.S.C. 551 et seq., to affirm, amend, modify,
 2 or set aside any part of the Secretary's final action and
 3 may order the Secretary to conduct further proceedings.
 4 Findings of fact by the Secretary, if supported by substan-
 5 tial evidence, are conclusive.

6 “(d) REQUIREMENT FOR PRIOR OBJECTION.—In re-
 7 viewing a final action under this section, the court may
 8 consider an objection to a final action of the Secretary
 9 only if the objection was made in the course of a pro-
 10 ceeding or review conducted by the Secretary or if there
 11 was a reasonable ground for not making the objection in
 12 the proceeding.”.

13 (b) CONFORMING AMENDMENT.—The chapter anal-
 14 ysis for chapter 51 is amended by striking the item related
 15 to section 5127 and inserting the following:

“5127. Judicial review.

“5128. Authorization of appropriations.”.

16 **SEC. 25. AUTHORIZATION OF APPROPRIATIONS.**

17 Section 5128, as redesignated by section 24 of this
 18 Act, is amended to read as follows:

19 **“§ 5128. Authorization of appropriations**

20 “(a) GENERAL.—To carry out this chapter (except
 21 sections 5107(e), 5108(g), 5112, 5113, 5115, 5116, and
 22 5119), not more than \$21,217,000 is authorized to be ap-
 23 propriated to the Secretary of Transportation for fiscal
 24 year 2002; and such sums as may be necessary are author-

1 ized to be appropriated to the Secretary for fiscal years
2 2003 through 2007.

3 “(b) EMERGENCY PREPAREDNESS FUND.—There
4 shall be available from the Emergency Preparedness Fund
5 account the following:

6 “(1) To carry out section 5116(j) of this title,
7 \$250,000 shall be available to the Secretary for fis-
8 cal year 2002, and such amounts as may be nec-
9 essary for fiscal years 2003 through 2007.

10 “(2) To carry out section 5115 of this title,
11 \$200,000 shall be available to the Secretary for fis-
12 cal year 2002, and such amounts as may be nec-
13 essary for fiscal years 2003 through 2007.

14 “(3) To carry out section 5116(a) of this title,
15 \$5,000,000 shall be available to the Secretary for
16 fiscal year 2002, and such amounts as may be nec-
17 essary for fiscal years 2003 through 2007.

18 “(4) To carry out section 5116(b) of this title,
19 \$7,800,000 shall be available to the Secretary for
20 fiscal year 2002, and such amounts as may be nec-
21 essary for fiscal years 2003 through 2007.

22 “(5) To carry out section 5116(f) of this title,
23 \$150,000 shall be available to the Secretary for fis-
24 cal year 2002, and such amounts as may be nec-
25 essary for fiscal years 2003 through 2007.

1 “(6) To publish and distribute the Emergency
 2 Response Guidebook, \$500,000 shall be available to
 3 the Secretary for fiscal year 2002, and such
 4 amounts as may be necessary for fiscal years 2003
 5 through 2007.

6 “(7) To carry out section 5107(e) of this title,
 7 such amounts as may be necessary are authorized to
 8 be appropriated to the Secretary for each of fiscal
 9 years 2002 through 2007.

10 “(8) To carry out section 5116(i)(4) of this
 11 title, \$400,000 shall be available to the Secretary for
 12 fiscal year 2002, and such amounts as may be nec-
 13 essary for fiscal years 2003 through 2007.

14 “(c) CREDITS TO APPROPRIATIONS.—The Secretary
 15 of Transportation may credit to any appropriation to carry
 16 out this chapter an amount received from a State, Indian
 17 tribe, or other public authority or private entity for ex-
 18 penses the Secretary incurs in providing training to the
 19 State, authority, or entity.

20 “(d) AVAILABILITY OF AMOUNTS.—Amounts avail-
 21 able under this section remain available until expended.”.

22 **SEC. 26. POSTAL SERVICE CIVIL PENALTY AUTHORITY.**

23 (a) Section 3001 of title 39, United States Code, is
 24 amended by adding a new subsection (o) as follows:

1 “(o)(1) Except as permitted by law and Postal Serv-
2 ice regulation, hazardous material is nonmailable.

3 “(2) For purposes of this section, the term ‘haz-
4 ardous material’ means a substance or material the Sec-
5 retary of Transportation designates under section 5103(a)
6 of title 49.”.

7 (b) Chapter 30 of title 39, United States Code, is
8 amended by adding a new section 3018 at the end as fol-
9 lows:

10 **“§ 3018. Hazardous material; civil penalty**

11 “(a) REGULATIONS.—The Postal Service shall pre-
12 scribe regulations for the safe transportation of hazardous
13 material in the mail.

14 “(b) HAZARDOUS MATERIAL IN THE MAIL.—No per-
15 son may—

16 “(1) mail or cause to be mailed a hazardous
17 material that has been declared by statute or Postal
18 Service regulation to be nonmailable;

19 “(2) mail or cause to be mailed a hazardous
20 material in violation of any statute or Postal Service
21 regulation restricting the time, place, or manner in
22 which a hazardous material may be mailed; or

23 “(3) manufacture, distribute, or sell any con-
24 tainer, packaging kit, or similar device that—

1 “(A) is represented, marked, certified, or
2 sold by such person for use in the mailing of a
3 hazardous material; and

4 “(B) fails to conform with any statute or
5 Postal Service regulation setting forth stand-
6 ards for a container, packaging kit, or similar
7 device used for the mailing of a hazardous ma-
8 terial.

9 “(c) CIVIL PENALTY.—

10 “(1) A person that knowingly violates this sec-
11 tion or a regulation issued under this section is lia-
12 ble to the Postal Service for a civil penalty of at
13 least \$250 but not more than \$100,000 for each vio-
14 lation, and for any clean-up costs and damages. A
15 person acts knowingly when—

16 “(A) the person has actual knowledge of
17 the facts giving rise to the violation; or

18 “(B) a reasonable person acting in the cir-
19 cumstances and exercising reasonable care
20 would have that knowledge.

21 “(2) Knowledge by the person of the existence
22 of a statutory provision, or a regulation or require-
23 ment prescribed by the Postal Service is not an ele-
24 ment of an offense under this section.

1 “(3) A separate violation occurs for each day a
2 hazardous material, mailed or caused to be mailed in
3 noncompliance with this section or a regulation
4 issued under this section, is in the mail.

5 “(4) A separate violation occurs for each item
6 containing a hazardous material that is mailed or
7 caused to be mailed in noncompliance with this sec-
8 tion or a regulation issued under this section.

9 “(d) HEARING REQUIREMENT.—The Postal Service
10 may find that a person has violated this section or a regu-
11 lation issued under this section only after notice and an
12 opportunity for a hearing. Under this section, the Postal
13 Service shall impose a penalty and recover clean-up costs
14 and damages by giving the person written notice of the
15 amount of the penalty, clean-up costs, and damages.

16 “(e) PENALTY CONSIDERATIONS.—In determining
17 the amount of a civil penalty under this section, the Postal
18 Service shall consider—

19 “(1) the nature, circumstances, extent, and
20 gravity of the violation;

21 “(2) with respect to the person who committed
22 the violation, the degree of culpability, any history of
23 prior violations, the ability to pay, and any effect on
24 the ability to continue in business;

25 “(3) the impact on postal operations; and

1 “(4) other matters that justice requires.

2 “(f) CIVIL ACTIONS TO COLLECT.—(1) In accord-
3 ance with section 409(d) of this title, the Department of
4 Justice or the Postal Service may commence a civil action
5 in an appropriate district court of the United States to
6 collect a civil penalty, clean-up costs, or damages assessed
7 under this section. In such action, the validity, amount,
8 and appropriateness of the civil penalty, clean-up costs,
9 or damages shall not be subject to review.

10 “(2) The Postal Service may compromise the amount
11 of a civil penalty, clean-up costs, or damages assessed
12 under this section before civil action is taken to collect
13 the penalty, costs, or damages.

14 “(g) CIVIL JUDICIAL PENALTIES.—At the request of
15 the Postal Service, the Attorney General may bring a civil
16 action in an appropriate district court of the United States
17 to enforce this chapter or a regulation prescribed or order
18 issued under this chapter. The court may award appro-
19 priate relief, including a temporary or permanent injunc-
20 tion, punitive damages, and assessment of civil penalties
21 considering the same penalty amounts and factors as pre-
22 scribed for the Postal Service in an administrative case
23 under this section.

1 “(h) DEPOSITING AMOUNTS COLLECTED.—Amounts
2 collected under this section shall be paid into the Postal
3 Service Fund established by section 2003 of this title.”.

4 (c) CONFORMING AMENDMENT.—The chapter anal-
5 ysis for chapter 30 of title 39, United States Code, is
6 amended by adding the following:

“3018. Hazardous material; civil penalty.”.

